

The complaint

Mr S complains that his stolen laptop claim has been declined by Amtrust Europe Ltd.

Mr S is being represented in this complaint, but for ease I'll refer to him throughout, including where I comment on any arguments or submissions made on his behalf. Similarly, when I refer to Amtrust I intend this to include the actions, submissions and correspondence of its agents.

What happened

The background is well known to both parties, so I won't rehearse it in detail. But in the interest of context, I'll set out some key points:

- Mr S was staying for a weekend at a HMO (house of multi-occupancy) which was occupied by college friends, bringing the laptop which is the subject of this insurance policy with him.
- At 8pm one evening during his stay, him and some friends went to play football at a local venue. Believing it to be safer than taking it with him, Mr S left his laptop in the lounge. He and his friends then exited the property via a door in that room, which was left unlocked as there were still other people in the house.
- The following morning Mr S discovered that, while they were out, his laptop was stolen along with items owned by others in the property. Police attended following this and a crime report was made.
- Mr S made a claim under his 'Assistive Solutions' policy which was declined principally because there was no 'force and violence' used to enter or exit the property.

Mr S brought a complaint to this Service and asked for an impartial review. I issued my provisional decision 17 September 2004 which set out the following:

The events surrounding the theft of the laptop are not in dispute. Fundamentally, the key point of this complaint is Amtrust's decision not to pay the claim – so that's what my investigation focuses on. Like our investigator, though, I agree that Amtrust's decision to decline the claim was fair and based on broadly the same underlying circumstances and reasons.

Mr S' laptop is covered for theft, but Amtrust has relied on an exclusion in its policy terms to decline the claim. It says:

"We will not pay claims where:

c) The Equipment was taken from a property unless there was Forced and Violent

Entry/Exit to or from the property”

Further, forced and violent entry/exit is listed under the definitions, which says:

“...Means an act that has caused physical damage to property through both the forcible and violent actions of a third party.”

Neither this policy exclusion, nor definition, are unusual – and are commonplace within insurance policies covering theft.

It's not in dispute that there was no evidence of force and violence to enter/exit the property. In the submissions I've seen, it appears Mr S and his friends left without locking any doors as there were still others in the property – so it wasn't necessary for a thief to overcome any of the usual means of securing it. And, therefore, there was no physical damage.

The question for me to decide is if Amtrust have fairly relied on this exclusion. On the face of it, it seems they have as the property was left unlocked. But I think the circumstances require further analysis than that.

Mr S wasn't at his usual address but staying with friends over a weekend. That he had his laptop with him isn't unusual given he was in the midst of university studies, and he relied on it given the additional software it contained to support him with his dyslexia. He left the property for a short while to play football and it's understandable he didn't want to take his laptop with him while he did so. His group of friends elected not to lock the house as there were other residents still there. As it wasn't his home, I don't think he could have reasonably insisted the doors were locked. And, as it was his friend's property, I don't think it was unreasonable for him to place an element of trust in their judgement in leaving it unlocked.

However, there is a condition in the policy – which is similarly commonplace - setting out:

You must take all reasonable steps to protect Your Equipment including but not limited to:

ii) Storing the Equipment in a suitable, safe place when in and out of use

It's clear from the submissions I've seen that this laptop was very important to Mr S and his studies, and that he recognised the risk of theft or damage to it as he made the decision not to take it with him to football training - believing it safer at his friend's house. I've already explained that the decision about locking the door was beyond him but I think there were still steps he could have taken to comply with the policy condition above.

The house Mr was staying in was multi-occupancy and home – it's stated – to 9 individuals. He knew the property was unlocked and left the laptop openly in a communal area, with people potentially regularly coming and going. He could have taken simple steps to ensure the laptop was out of sight, less accessible and well away from the unlocked door.

Further, the theft was only discovered the following morning. Mr S last noted seeing it at 7.00pm, an hour before he departed to play football, meaning it was some considerable time before he'd checked on its whereabouts. Again, I can't agree this demonstrates he took sufficient measures to mitigate the risk of theft, given the indifference to its location.

While I don't find it fair for Amtrust to rely on its force and violence exclusion – and I'm pleased to see it's taken a broader view of reviewing the claim outside of that policy term – I do find that it's fairly declined this claim. I say that for the reasons I've set out above, and because I'm not persuaded Mr S took reasonable steps to protect his laptop in line with the policy terms.

I'm sorry that he has now lost his laptop and his means of undertaking his studies due to the actions of a dishonest individual(s), however I don't require Amtrust to do anything further in respect of this claim.

My provisional decision

I don't intend to uphold this complaint about Amtrust Europe Limited

Responses to my provisional decision

Amtrust replied to say it had no further comments to add, and there was no response from Mr S.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

No further comments were provided by either party so there is nothing new for me to consider. As I set out in my provisional decision, therefore, I don't require Amtrust to do anything further in respect of this claim.

My final decision

For the reasons I've given above, my final decision is I don't uphold this complaint about Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 November 2024.

Andy Howell
Ombudsman